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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/601,817	06/23/2003	Lesley L. Sears	ALR0001.US	9832
7590 Todd T. Taylor TAYLOR & AUST, P.C. 142 S. Main St. P.O. Box 560 Avilla, IN 46710			EXAMINER RIVIERE, HEIDI M	
			ART UNIT 3629	PAPER NUMBER
			MAIL DATE 08/31/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/601,817

Applicant(s)

SEARS, LESLEY L.

Examiner

Heidi Riviere

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 23 June 2003.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### **Status of Claims**

#### **Information Disclosure Statement**

1. The Information Disclosure Statement filed on **23 June 2003** has been considered. An initialed copy of the Form 1449 is enclosed herewith.

#### ***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a) because they fail to show a pre-calibrated dispenser system, a mold, a container loading apparatus as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application.

Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary

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to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. **Claims 1-2, 5-9, 12-16, 19 and 20** are rejected under 35 U.S.C. 102(e) as being anticipate by **Donovan et al. (US 2006/0014324 A1)** (hereinafter "**Donovan**").

5. **With respect to claim 1:** Donovan teaches:

- obtaining personal profile elements including at least one of hair type, skin type, lifestyle, skin ailments, hair condition and ethnicity; (page 2, paragraph

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38, lines 1-16 - A Method which comprises of collecting consumer profiling data that includes hair type, hair color, lifestyle, skin type etc.)

- soliciting personal preferences including at least one of color and texture; (page 2, paragraph 38, lines 44-54; page 3, paragraph 39, lines 6-13 - "Instructions from the customer are received with respect to the one or more specification options for the customized product. Illustrative specification options for the cosmetic product example comprise color of the product ...texture of the product.")
- formulating a personal care product dependant upon each of said personal profile elements and said personal preferences. (page 2, paragraph 38, lines 44-54; page 3, paragraph 39, lines 6-13 and paragraph 40 - The consumer creates a list of instructions based on their product preference choices. These choices are then used to create the customized product.)

6. **With respect to claim 2:** Donovan teaches said personal profile elements is skin type. (page 2, paragraph 38, lines 1-16 - A Method which comprises of collecting consumer profiling data that includes hair type, hair color, lifestyle, skin type etc.)

7. **With respect to claim 5:** Donovan teaches the step of containerizing said personal care product in an application container. (page 3, paragraph 41; page 4, paragraph 45 - The consumer is given a choice of packaging for the customized product. "Preferably the choice of functionality would itself comprise the choice of dispensing devices, such as squeeze tube or pump".)

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8. **With respect to claims 6, 12 and 19:** Donovan teaches formulating step includes the step of blending at least one active ingredient and at least one base ingredient. (page 3, paragraph 39; page 8, paragraph 65; page 3, paragraph 42, second col., lines 24-29 – consumer first chooses whether they want a hair care or skin care product, for example. After the product is chosen various components such as micro-beads or vitamins or minerals is added to the customized product.)

9. **With respect to claim 7, 13 and 20:** Donovan teaches at least one active ingredient includes vitamins, minerals, carrier oils, essential oils, pigments, specialty chemicals, exfoliants, flavorings and fragrances. (page 3, paragraph 39, lines 8-17; page 4, paragraph 44 - Customers have the option of adding one or more supplements to the product being customized. These supplements include and are not limited to vitamins, minerals or organic products.)

10. **With respect to claim 8:** Donovan teaches:

- securing the contents of a present cosmetic; (page 3, paragraph 41; page 4, paragraph 45 - The consumer is given a choice of packaging for the customized product. “Preferably the choice of functionality would itself comprise the choice of dispensing devices, such as squeeze tube or pump”.)
- obtaining information relative to personal experience with said present cosmetic; (page 4, paragraph 47, lines 30-51 – customer is given a feedback survey. “The questions might comprise questions on how the consumer liked the product, any problems encountered using the product, overall satisfaction for the product, and possible ways to improve the product.”) and

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- formulating a new cosmetic based on said contents and said personal experience. (page 5, paragraph 47, lines 8-11 and lines 20-23 – The feedback data is reviewed and used to modify the customized product based on new data and information from the consumer's experience.)

11. **With respect to claims 9 and 16:** Donovan teaches information includes background information including at least one of hair type, skin type, lifestyle, skin ailments, hair condition and ethnicity. (page 2, paragraph 38, lines 1-16 - A Method which comprises of collecting consumer profiling data that includes hair type, hair color, lifestyle, skin type etc. )

12. **With respect to claim 14:** Donovan teaches:

- obtaining anticipatory information, said anticipatory information being changes that a person expects their body to encounter; (page 9, paragraph 75, line 23 to page 10, paragraph 75, line 7; Fig. 24, items 600 and 601 – information collected from consumer includes data regarding age and season of the year product will be used.)
- additionally obtaining current experience information relative to the personal care product; (page 4, paragraph 47, lines 30-51 – customer is given a feedback survey. “The questions might comprise questions on how the consumer liked the product, any problems encountered using the product, overall satisfaction for the product, and possible ways to improve the product.”) and

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- formulating a new personal care product based on said current experience information and said anticipatory information. (page 5, paragraph 47, lines 8-11 and lines 20-23; (page 9, paragraph 75, line 23 to page 10, paragraph 76 – The feedback data is reviewed and used to modify the customized product based on new data and information from the consumer's experience.)

13. **With respect to claim 15:** Donovan teaches anticipatory information includes at least one of pregnancy, age, changes in environment, changes in chemotherapy, changes in a smoking habit, hormonal levels and medications. (page 4, paragraph 47, lines 5-14; page 9, paragraph 75, line 23 to page 10, paragraph 75, line 7; Fig. 24, items 600 and 601 – information collected from consumer includes data regarding life stage, age and season of the year product will be used.)

### ***Claim Rejections - 35 USC § 103***

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. **Claims 3, 10 and 17** are rejected under 35 U.S.C. 103(a) as being unpatentable over Donovan as applied to **claims 1-2, 8-9 and 14-16** above, and further in view of **Kemwall.co.uk** "Lipstick" (verified by Wayback Machine to **4/24/2001** and hereinafter "**Kemwall-1**").



16. **With respect to claims 3, 10 and 17:** Donovan teaches the limitations cited in the above rejections. Donovan fails to teach the step of compressing said personal care product, thereby forming it into an elongated shape. However, Kemwall-1 on page 1 of the section on lipsticks teaches the making of lipstick moulds. Kemwall-1 further states "we have the facilities to manufacture many types of hand moulds for almost every shape and size of lipstick." It is well known in the art of lipstick making that lipsticks have "elongated" shapes. Therefore it is inherent that one of the shapes represented in a machine to manufacture lipstick would be an elongated shape.

As a result, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teaching of Donovan by using the lipstick mould of Kemwall-1 because of the motivation "to meet individual requirements."

17. **Claims 4, 11 and 18** are rejected under 35 U.S.C. 103(a) as being unpatentable over Donovan as applied to **claims 1-3, 8-10 and 14-17** above, and further in view of **Kemwall.co.uk** "Laboratory Cosmetic Powder Press" (verified by Wayback Machine to **3/5/2001** and hereinafter "**Kemwall-2**").

18. **With respect to claims 4, 11 and 18:** Donovan teaches the limitations cited in the above rejections. However, while Donovan does not teach said compressing step is carried out with a manual cosmetic press Kemwall-2 discloses this limitation. (page 1, section titled "Laboratory Cosmetic Powder Press") According to Kemwall-2 you can have a manually operated cosmetic press for the purpose of "small pre-production runs, colour or formulation testing...used by several companies as a low volume production unit."

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It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teaching of Donovan by using the Kemwall -2 press because of the motivation to have "small pre-production runs, colour or formulation testing".

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**Conclusion**

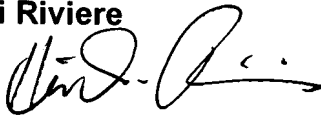
19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Heidi Riviere whose telephone number is 571-270-1831. The examiner can normally be reached on Monday-Friday 7:30am-5:00pm EST.; Alternative Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 571-272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

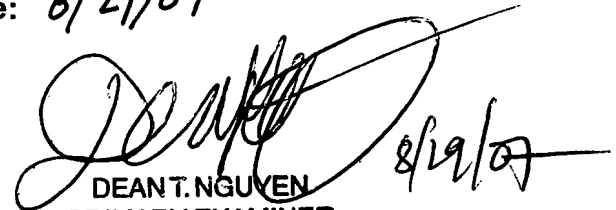
Name: Heidi Riviere

Signature:



Title: Examiner

Date: 8/21/07



DEANT. NGUYEN  
PRIMARY EXAMINER

8/29/07